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		Application Number	09/766,412-Conf. #7335
		Filing Date	January 22, 2001
		First Named Inventor	Ruowen GE
		Art Unit	1653
		Examiner Name	A. A. Mohamed
Total Number of Pages in This Submission	5	Attorney Docket Number	1781-0215P

ENCLOSURES (Check all that apply)

<input type="checkbox"/> Fee Transmittal Form	<input type="checkbox"/> Drawing(s)	<input type="checkbox"/> After Allowance Communication to TC
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SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	BIRCH, STEWART, KOLASCH & BIRCH, LLP		
Signature			
Printed name	Mark J. Nuell, Ph.D.		
Date	November 15, 2005	Reg. No.	36,623

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**NO FEE PETITION UNDER 37 CFR 1.181 AND 1.144
EXPEDITED PROCEDURES EXAMINING
GROUP**

Docket No.: 1781-0215P
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Ruowen GE, et al.

Application No.: 09/766,412

Confirmation No.: 7335

Filed: January 22, 2001

Art Unit: 1653

For: **SMALL PEPTIDES HAVING ANTI-
ANGIOGENIC AND ENDOTHELIAL CELL
INHIBITION ACTIVITY**

Examiner: A. A. MOHAMED

PETITION UNDER 37 C.F.R. § 1.181 AND §1.144

MS AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

No Fee Status

Initially, Applicants respectfully submit that, because this petition is filed procedurally under 37 CFR 1.181, no fee is due.

Petition

Applicants respectfully petition the Examiner's decision in the Office Action of September 21, 2005 withdrawing claims 10, 15, 16, 25, and 26 from consideration. In particular,

Applicants petition to withdraw the September 21, 2005 Office Action, and to receive an Office Action on the merits of claims 10, 15, 16, 25, and 26 along with the other claims being examined on their merits in this application.

Applicants have repeatedly requested reconsideration of the withdrawal of such claims, most recently on page 8 of the Amendment that was filed on July 8, 2005.

Applicants contend that the Examiner's decision is based on a conclusion that is unsupported by valid evidence or reasoning and as such denies Applicants fundamental procedural and substantive due process which the Office is supposed to accord Applicants via the Administrative Procedures Act. See in this regard, *In re Zurko*, 119 S.Ct. 1816, 50 USPQ2d 1930 (1999), and *In re Gartside*, 53 USPQ2d 1769 (Fed. Cir. 2000).

The background is as follows. In an Office Action mailed on August 25, 2003, the Examiner stated (among other things) that "Applicant is to elect a single disclosed sequence". In the Amendment filed September 25, 2003, Applicants elected the peptide having SEQ ID NO:30. Claims 1, 2, 6-8, 10, 13-16, 19, 22, 23, and 25-32 are pending in this application. Claims 1, 2, 6-8, 10, 25, and 29 all read on (that is, encompass) the peptide having SEQ ID NO:30. In fact, ***claim 25 is limited to the elected peptide of SEQ ID NO:30*** ("25. The peptide of claim 10, comprising the peptide having the amino acid sequence of SEQ ID NO:30.").

It is a fact that the peptide having the amino acid sequence of SEQ ID NO:30 – which the Examiner acknowledges is the elected sequence – is a peptide which is a portion of an endostatin protein that has a length (13 amino acids) within the claim 1 range of 7 to 20 amino acids. The Examiner is examining claim 1 ("A peptide comprising a portion of an endostatin protein, wherein said peptide is of length from 7-20 amino acids long") and claim 7 ("The peptide of

claim 1 that has a length of 9 to 20 amino acids"). It is not clear why the Examiner is refusing to examine claim 10 ("The peptide of claim 1, comprising a peptide having an amino acid sequence selected from the group consisting of SEQ ID NOS: 30-32"). Those peptides have lengths respectively of 13, 14, and 16 amino acids. It is not clear why the Examiner is refusing to examine claim 25 ("The peptide of claim 10, comprising the peptide having the amino acid sequence of SEQ ID NO:30"). If claim 25 were to be stated in the manner of claim 7, claim 25 would read "The peptide of claim 1 that has a length of 13 amino acids".

37 CFR 1.142 refers to inventions that are both "independent and distinct". Claim 10 is not *independent* of claim 1 – claim 10 expressly depends from claim 1. Does the Examiner believe that claim 1 is *patentably distinct* from claim 25? That is, if the Examiner found a reference which disclosed the subject matter of claim 25, would the Examiner allow claim 1 as being drawn to subject matter which is patentably distinct from the subject matter disclosed in claim 25? Presumably not, inasmuch as claim 25 recites a specific embodiment falling within the scope of claim 1. The Examiner has failed to demonstrate that his purported "restriction" between claims 1 and 7 on the one hand and claims 10 and 25 on the other hand is justified under the applicable Rules.

Applicants respectfully submit that the Examiner's requirement in his item no. 4 on page 4 of the outstanding Office Action – that Applicants cancel claims 10, 15, 16, **25**, and 26 – is without justification in fact or law. Applicants respectfully request that the Commissioner instruct the Examiner to withdraw the September 21, 2005 Office Action, and to provide Applicants with an Office Action on the merits of claims 10, 15, 16, 25, and 26 along with the other claims being examined on their merits in this application.

If there are any remaining issues or questions, the Examiner is invited to telephone Richard Gallagher (Reg. No. 28,781) at (703) 205-8008.

If necessary, the Commissioner is hereby authorized to debit Deposit Account No. 02-2448 for any additional fee required under 37 C.F.R. §1.16 or §1.17, particularly extension of time fees.

Dated: November 15, 2005

Respectfully submitted,

By 
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